

JAMES SIKOSKI)
)
v.) NO. 3:05-0641
) JUDGE CAMPBELL
EATON LEONARD USA)

action and that communications to Plaintiff himself cannot be a “publication” for defamation purposes.

Plaintiff’s Opposition Memorandum (Docket No. 12) refers to an “Amended Complaint” which has not been filed and, therefore, is not before the Court. The Court makes this decision based upon the record as it exists, and the only Complaint is Docket No. 1.

MOTIONS TO DISMISS

In considering a motion to dismiss for failure to state a claim on which relief can be granted, the court must accept as true all factual allegations in the complaint. Broyde v Gotham Tower, Inc., 13 F.3d 994, 996 (6th Cir. 1994). The motion should be granted only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Id.

A motion to dismiss for failure to state a claim upon which relief can be granted must be viewed in the light most favorable to the party opposing the motion. State of Ohio ex rel. Fisher v. Louis Trauth Dairy, Inc., 856 F.Supp. 1229, 1232 (S.D. Ohio 1994). The purpose of a motion to dismiss for failure to state a claim is to allow the defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993).

DEFAMATION

To establish a *prima facie* case of defamation in Tennessee, Plaintiff must establish that (1) Defendant published a statement, (2) with knowledge that the statement is false and defaming to Plaintiff; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. Sullivan v. Baptist Memorial Hospital, 995 S.W.2d 569, 571

(Tenn. 1999). “Publication” is a term of art meaning the communication of defamatory matter to a third person. Id.

In Tennessee, communication among agents of the same corporation made within the scope and course of their employment relative to duties performed for that corporation are not to be considered as statements communicated or publicized to third persons. Woods v. Helmi, 758 S.W.2d 219, 223 (Tn. Ct. App. 1988); Siegfried v. Grand Krewe of Sphinx, 2003 WL 22888908 at * 2 (Tenn. Ct. App. Dec. 2, 2003).

In this case, Plaintiff has not alleged publication to anyone outside the Defendant corporation. In fact, the Complaint specifically says that ELU employees published the defamatory information “within the company.” Docket No. 1, ¶ 5. There is no allegation in the Complaint of publication to third parties, which is a necessary element of a defamation claim.

Therefore, Defendant’s Motion to Dismiss is well-taken and is GRANTED. This action is DISMISSED.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE